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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
10

11 GENEXA INC,
12 Plaintiff,
13 v.
14 KINDERFARMS LLC,
15 Defendant.
16

CASE NO. 2:22-cv-09291

**DECLARATION OF DAVID W.
SCHECTER IN SUPPORT OF
DEFENDANT KINDERFARMS
LLC'S MOTION TO DISMISS,
MOTION TO STRIKE, AND
SPECIAL MOTION TO STRIKE
(ANTI-SLAPP)**

*[Filed Concurrently with Notice of
Motion and Motion to Dismiss
Plaintiff's Complaint; Motion to Strike
and Special Motion to Strike (Anti-
SLAPP); Memorandum of Points and
Authorities; Request for Judicial
Notice; and [Proposed] Order]*

Hearing Date: February 13, 2023
Hearing Time: 10:00 am
Courtroom: 5A

Complaint Filed: December 22, 2022
Trial Date: Not yet set

Assigned to: The Honorable Michael
W. Fitzgerald and Magistrate Judge
Steve Kim

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DECLARATION OF DAVID W. SCHECTER

I, David W. Schechter, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a Partner with Miller Barondess, LLP, counsel of record for Defendant KinderFarms LLC. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify to all of said facts. I make this declaration in support of KinderFarms LLC's Motion to Dismiss, Motion to Strike, and Special Motion to Strike (anti-SLAPP) Plaintiff Genexa Inc.'s Complaint.

2. Genexa did not serve KinderFarms LLC with a cease and desist letter before filing the Complaint. After Genexa filed the Complaint and on January 3, 2023, KinderFarms and one of its investors served Genexa with written correspondence responding to the factual claims set forth in the Complaint and attaching documentary evidence.

3. On January 3, 2023, KinderFarms served Genexa with a letter per Local Rule 7-3 setting forth the pleading deficiencies in the Complaint and informing Genexa that KinderFarms will move to dismiss and strike certain claims and allegations in the Complaint.

4. Counsel for the parties met and conferred by telephone on January 6, 2023 pursuant to Local Rule 7-3. Despite counsel's efforts, the parties could not reach agreement on the issues, thus necessitating this Motion.

5. During the meet and confer, Genexa claimed that it was not asserting a trade dress infringement claim, but rather was only asserting false advertising under 15 U.S.C. § 1125(a)(1)(B).

6. Attached as **Exhibit A** to the Request for Judicial Notice, filed concurrently herewith, is a true and correct copy of a webpage found at the URL: <https://www.genexa.com/products/kids-cough-chest-congestion-liquid>, which I visited on January 13, 2013.

7. Attached as **Exhibit B** to the Request for Judicial Notice, filed

1 concurrently herewith, is a true and correct copy of a webpage found at the URL:
2 <https://kinderfarms.com/products/kindermed-kids-cough-congestionthat>, which I
3 visited on January 13, 2013.

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed on this 13th day of January, 2023, at Los Angeles, California.

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David W. Schechter